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July 08, 2008

### Legend

Distributing 2 =

Distributing 1 =

Controlled 1 =

Controlled 2 =

Controlled 3 =

Sub 1 =

Sub 2 =

Sub 3 =

Sub 4 =

Sub 5 =

Sub 6 =

Sub 7 =

Sub 8 =

Sub 9 =

Sub 10 =

Sub 11 =

Sub 12 =

Sub 13 =

Sub 14 =

Sub 15 =

Sub 16 =

Sub 17 =

Sub 18 =

Sub 19 =

Sub 20 =

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Sub 22 =

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Sub 26 =

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Sub 28 =

Sub 29 =

Sub 30 =

Sub 31 =

Sub 32 =

Sub 33 =

Sub 34 =

Sub 35 =

Sub 36 =

Sub 37 =

Sub 38 =

Sub 39 =

Sub 40 =

LLC 1 =

Business A =

Business B =

Business C =

Shareholder A =

Shareholder B =

Shareholder C =

Intellectual Property =

IP Agreement =

State A =

Country A =

Country B =

Country C =

Country D =

Country E =

Country F =

Country G =

Country H =

Country I =

Country J =

Country K =

Country L =

Country M =

Country N =

Country O =

Country P =

Country R =

Country S =

Country T =

Country U =

Country V =

Date A =

Date B =

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Date F =

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Dear :

This letter responds to your March 20, 2008 letter requesting rulings on the federal income tax consequences of a series of proposed transactions. The information submitted in that request and in later correspondence is summarized below.

The rulings contained in this letter are based on facts and representations submitted by the taxpayers and accompanied by penalty of perjury statements executed by the appropriate party. This office has not verified any of the materials submitted in support of the request for rulings. Verification of the information, representations, and other data may be required as part of the audit process.

In particular, this office has not reviewed any information pertaining to, and has made no determination regarding whether Internal Spin-off 1, Internal Spin-Off 2, and External Spin-Off (each defined below): (i) satisfy the business purpose requirement of § 1.355-2(b) of the Income Tax Regulations; (ii) are being used principally as a device for the distribution of the earnings and profits of any distributing corporation or controlled corporation or both (see § 355(a)(1)(B) of the Internal Revenue Code of 1986 (the “Code”) and § 1.355-2(d); or (iii) are part of a plan (or series of related transactions) pursuant to which one or more persons will acquire directly or indirectly stock representing a 50-percent or greater interest in any distributing or controlled corporation (see § 355(e) and § 1.355-7).

### **Summary of Facts**

Distributing 2, a State A corporation, is the common parent of an affiliated group of corporations (the “Distributing 2 Group”) that files a consolidated income tax return on a calendar year basis. Distributing 2 is directly engaged in each of Business A, Business B, and Business C, primarily in the United States. Distributing 2 also conducts Business A on a global basis through numerous direct and indirect wholly-owned foreign subsidiaries. Distributing 2 also conducts Business B and Business C on a global basis through other direct and indirect wholly-owned subsidiaries, some of which are described below. Distributing 2 currently owns the Intellectual Property.

Distributing 2 has approximately a shares of common stock issued and outstanding. Distributing 2’s common stock is publicly traded. Distributing 2 also has authorized one class of preferred stock, but no shares of Distributing 2 preferred stock are issued or outstanding. As of the most recent date for which such information is available, Shareholder A owns approximately b percent, Shareholder B owns approximately c percent, and Shareholder C owns approximately d percent of the outstanding Distributing 2 common stock. To the best knowledge of Distributing 2, no other shareholder owns more than five percent of the stock of Distributing 2.

Distributing 2 owns all of the stock of Controlled 3, a state A corporation and member of the Distributing 2 Group. Controlled 3 is directly engaged in Business B, primarily in the United States.

Distributing 2 directly owns all of the outstanding stock of Distributing 1, a Country A company that is classified as a corporation for U.S. federal income tax purposes. Distributing 1 functions as a treasury center and holding company for numerous direct and indirect foreign subsidiaries that conduct Business A and Business B in several foreign countries.

Controlled 1 is a Country B company treated as a corporation for U.S. federal income tax purposes that conducts Business B in certain foreign countries. Distributing 1 owns e of the f outstanding shares of Controlled 1's only outstanding class of stock. To satisfy Country B legal requirements, the remaining share of Controlled 1 stock is held by LLC 1, a wholly-owned entity of Distributing 2 that is disregarded as an entity separate from its owner for federal income tax purposes under § 301.7701-3 (a "disregarded entity"). Distributing 1 also owns all of the outstanding stock of Controlled 2, a Country A company treated as a corporation for U.S. federal income tax purposes.

Sub 1, Sub 2, and Sub 3 are wholly-owned Distributing 1 foreign subsidiaries, each of which is treated as a corporation for U.S. federal income tax purposes. Sub 1, a Country A corporation, owns all of the stock of Sub 6, a Country S corporation. Sub 6 is directly engaged in Business B.

Sub 3, a Country R corporation, owns all of the stock of Sub 4, a Country R corporation, and Sub 4 in turns owns all of the stock of Sub 5, a Country R corporation. Sub 5 is directly engaged in Business A.

Financial information has been submitted that indicates that each of Business A, Business B, and Business C has had gross receipts and operating expenses representing the active conduct of a trade or business for each of the past five years.

Distributing 2 desires to separate Business B and Business C from Business A for several business reasons including: (1) to permit Distributing 2's existing senior management to achieve its objective of focusing entirely on Business A and to dispose of all significant assets not related to Business A, (2) to permit Controlled 3 to adopt its own capital structure more suited to the financial characteristics of Business B and Business C, (3) to allow Controlled 3 to broaden its management talent in Business B and Business C, and (4) to enable Controlled 3 to formulate management compensation plans based on its industry and equity performance.

### **Proposed Transactions**

For what has been represented to be valid business purposes, the following steps have been proposed or partially completed (the "Proposed Transaction"):

- (i) Distributing 1 will distribute all of its Controlled 1 stock to Distributing 2 (“Internal Spin-Off 1”). Internal Spin-Off 1 will occur prior to Contribution 2 and the External Spin-Off (described below).
- (ii) Distributing 1 will: (a) contribute all of its Sub 1 stock and all of its Sub 2 stock to Controlled 2 (“Contribution 1”) and (b) distribute all of its Controlled 2 stock to Distributing 2 (“Internal Spin-Off 2”). Contribution 1 and Internal Spin-Off 2 will occur prior to Contribution 2 and the External Spin-Off (described below).
- (iii) Distributing 2 will contribute all of the Controlled 1 stock received in Internal Spin-Off 1, all of the Controlled 2 stock received in Internal Spin-Off 2, assets related to Business B and Business C, and the stock of certain foreign subsidiaries described below (collectively, the “Contributed Property”), and transfer liabilities and employees related to Business B and Business C, to Controlled 3 in exchange for Controlled 3 stock (“Contribution 2”).
- (iv) Immediately prior to the External Spin-Off (described below), Controlled 3 will distribute an amount of cash equal to the Cash Amount (as described below) to Distributing 2.

The “Cash Amount” will equal g, increased by the amount of Controlled 3’s cash and cash equivalents as of the end of the effective date of the External Spin-Off, and either (a) increased by the negative amount (if any) of the after-tax operating cash flow of Business B and Business C from January 1, 2008 through the effective date of the External Spin-Off or (b) decreased by the positive amount (if any) of the after-tax operating cash flow of Business B and Business C from January 1, 2008 through the effective date of the External Spin-Off. Distributing 2 estimates that the amount of cash distributed by Controlled 3 to Distributing 2 immediately prior to the External Spin-Off will be approximately \$h. The Cash Amount will be finally determined by Distributing 2 and Controlled 3 shortly following the effective date of the External Spin-Off, and a true-up payment will be made by Distributing 2 to Controlled 3 (or vice versa) so that the net cash distributed by Controlled 3 to Distributing 2 (taking into account the cash distributed in step (iv) above) equals the Cash Amount as finally determined.

- (v) Distributing 2 will distribute 100% of the outstanding Controlled 3 stock to Distributing 2’s shareholders on a pro rata basis (the “External Spin-Off”).
- (vi) Distributing 2 will transfer the Cash Amount received from Controlled 3 to its creditors and shareholders pursuant to the plan of reorganization within 12 months of the External Spin-Off. Approximately i of the Cash Amount will be used to repay existing Distributing 2 indebtedness. The entire portion of the Cash Amount not used to repay existing Distributing 2 indebtedness (i.e., approximately \$j) will be used to repurchase outstanding Distributing 2 shares. In connection with the approval of the External Spin-Off and in



anticipation of the receipt of the Cash Amount, Distributing 2's Board of Directors will authorize a \$j increase in its existing share buyback program. Prior to the External Spin-Off, Distributing 2 will make a public announcement committing itself to the repurchase of \$j of its stock. Such share repurchases shall be completed within 12 months of the External Spin-Off.

In connection with the Proposed Transactions, and in order to accomplish the separation of the assets, liabilities and employees related to Business A from those related to Business B and Business C, Distributing 2 and certain of its subsidiaries and Controlled 3 and certain of its subsidiaries will engage in several restructuring transactions described below (the "Internal Restructurings"). Distributing 2 has not requested rulings with respect to these transactions.

Each legal entity referred to in the following summary is treated as a corporation for U.S. federal income tax purposes unless otherwise stated.

- (vii) Immediately prior to the External Spin-Off, Controlled 3 will engage in a stock split that will increase the number of its shares of common stock outstanding, and Controlled 3 will change its name. Distributing 2 asserts that the stock split qualifies as a reorganization pursuant to § 368(a)(1)(E) and that the change in Controlled 3's name qualifies as a reorganization pursuant to § 368(a)(1)(F).
- (viii) Sub 8, a Country C corporation wholly-owned by Distributing 2, will sell the outstanding equity of Sub 9, a Country D company that is engaged in Business C and that is a disregarded entity, to Sub 10, a Country D company that is a wholly-owned subsidiary of Sub 2, for cash based on an appraised value of Sub 9. Distributing 2 will treat this transaction for federal income tax purposes as a sale of assets by Sub 8 to Sub 10.
- (ix) Sub 11, a Country E company engaged in Business A and Business B and owned k% by Distributing 2, l% by Controlled 1, a Country B corporation, and m% by Sub 12, a dual U.S./Country F corporation that is wholly owned by Distributing 2, will contribute the assets related to Business A to Sub 13, a newly-formed Country E disregarded entity that is wholly-owned by Sub 11. Sub 11 will then sell all of its Sub 13 equity to Distributing 1 for cash based on an appraised value of Sub 13. Distributing 2 will treat this as a sale of assets by Sub 11 to Distributing 1 for federal income tax purposes. Distributing 2 expects that Sub 13 will subsequently elect to be treated as a corporation for U.S. federal income tax purposes.
- (x) On Date A, Distributing 2 purchased all of the stock of Sub 14, a Country G corporation engaged in Business B, from Sub 15, a Country G corporation that is an indirect wholly owned subsidiary of Distributing 2 for cash based on

the estimated fair market value of the purchased shares. Distributing 2 contributed the shares of stock of Sub 14 to the capital of Distributing 2's wholly-owned subsidiary, Sub 12, which in turn contributed those shares to the capital of its wholly-owned subsidiary, Sub 17, a Country F corporation, which in turn contributed those shares to the capital of its wholly-owned subsidiary, Sub 18, a Country F corporation.

- (xi) Controlled 3 recently formed Sub 19, a Country H limited company that is a shell entity. Controlled 3 assigned its interest in Sub 19, for cash, to Controlled 2 for nominal consideration (while Sub 19 was still a shell entity). Sub 7, a Country H limited company that is an indirect wholly-owned subsidiary of Distributing 1, will sell its assets related to Business B and Business C, for cash, to Sub 19. Distributing 2 will treat this transaction as a sale of assets by Sub 7 to Sub 19 for federal income tax purposes.
- (xii) Sub 20 is a Country I corporation engaged in Business B. Distributing 2 owns n% of the outstanding stock of Sub 20 and LLC 1 owns the remaining o% of Sub 20's outstanding stock. Controlled 3 will form Sub 21, a Country I corporation. Sub 21 will be wholly-owned by Controlled 3, except that a newly-formed intermediate United States holding company will own one share of Sub 21 (constituting less than p% of the issuer's outstanding stock). Sub 20 will sell its Business B assets to Sub 21 for cash based on the estimated fair market value of those assets.
- (xiii) Sub 22 is a limited company organized in Country J that is wholly-owned by Distributing 2 and conducts Business A, Business B and Business C in numerous foreign countries directly and through various subsidiaries and foreign offices. On Date C, Distributing 2 contributed all of its Sub 22 equity to Controlled 3, and on Date D, Sub 22 sold the shares of its wholly owned subsidiary Sub 23, a Country J limited company that conducts Business A through its wholly-owned Country K subsidiary, Sub 24, to Sub 25, a newly-formed Country J limited company that is wholly owned by Distributing 2, for cash based on the fair market value of those shares. Sub 23 and Sub 24 are disregarded entities, so this sale will be treated as a sale of assets for U.S. federal income tax purposes.
- (xiv) In addition, Sub 22 will transfer Business A assets of de minimis value to Sub 26, a newly-formed Country K company that is a wholly owned subsidiary of Sub 27, a newly-formed Country J company that is wholly-owned by Sub 25. Both Sub 26 and Sub 27 are disregarded entities.
- (xv) Sub 28, a recently formed Country L limited company wholly owned by Controlled 3, will purchase assets related to Business B and Business C from Sub 29, an indirect wholly-owned Distributing 2 subsidiary, for cash based on

the estimated fair market value of the acquired assets, and certain foreign representative offices of Sub 8 will be de-registered and re-registered as representative offices of Sub 22 and Sub 28.

- (xvi) On Date B, Sub 30, a Country M limited company wholly owned by Distributing 2 that was engaged in Business A and Business B, sold its Business B assets to Sub 31, a recently-formed Country M limited company wholly owned by Sub 30, for cash, based on the net book value of the transferred assets, and Sub 30 subsequently contributed \$r to the capital of Sub 31. On Date C, Sub 30 sold all of the equity of Sub 31 to Controlled 3 for cash based on the estimated fair market value of such equity.
- (xvii) Sub 32, a Country N company that is wholly-owned by Sub 8 and is primarily engaged in Business A, will transfer employees and leaseholds, together with certain assets of de minimis value related to Business B and Business C to Sub 33, a newly-formed Country N company that is wholly owned by Controlled 3.
- (xviii) Sub 34, a Country O company indirectly wholly-owned by Distributing 2, will sell its Business B assets to Sub 35, a newly formed Country O company that is wholly-owned by Controlled 3, for cash, based on an appraised value of the transferred assets.
- (xix) Sub 36, a Country P company that is owned n% by Distributing 2 and o% by LLC 1, will sell its Business B assets to Sub 37, a newly formed Country P company that will be owned n% by Controlled 3 and o% by a special purpose holding company that is a direct wholly owned subsidiary of Controlled 3, for cash, based on an appraised value of the transferred assets.

Distributing 2 does not expect a material amount of gain from any of the sales described above to constitute subpart F income.

In addition to Distributing 2's contribution to Controlled 3 of the stock of Controlled 1 received in Internal Spin-Off 1 and the stock of Controlled 2 received in Internal Spin-Off 2, Distributing 2 will, as part of Contribution 2, contribute to Controlled 3: (i) all of the outstanding stock of Sub 12, (ii) all of the stock of Sub 11 held by Distributing 2 (constituting k% of Sub 11's outstanding stock), (iii) all of the outstanding stock of Sub 38, a Country I corporation engaged in Business C, (iv) all of the outstanding stock of Sub 39, a Country T corporation engaged in Business B, (v) all of the outstanding stock of Sub 40, a Country U corporation engaged in Business B, and (vi) all of the outstanding stock of Sub 16, a Country V corporation engaged in Business C.

In connection with the External Spin-Off, Distributing 2 and Controlled 3 will enter into the following agreements (the "Ancillary Agreements"):

- (i) Immediately prior to the External Spin-Off, Distributing 2 and Controlled 3 will enter into an IP Agreement pursuant to which Controlled 3 and its affiliates will be granted a perpetual and exclusive right to use the Intellectual Property in connection with Business B and Business C, and Distributing 2 and its affiliates will retain a perpetual and exclusive right to use the Intellectual Property in connection with Business A.
- (ii) In connection with the External Spin-Off, Distributing 2 and Controlled 3 will also enter into an agreement for transitional services for the period beginning on the effective date of the External Spin-Off and ending generally on Date E. The transition services period is subject to limited optional extension provisions with respect to certain specified services, but Distributing 2 does not expect any such transition services to be provided for more than 9 months following the effective date of the External Spin-Off. The transitional services under that agreement will be compensated on a cost basis.
- (iii) In addition, Distributing 2 and Controlled 3 will enter into agreements in regard to the separation of Business A from Business B and Business C that include:
  - a. Separation and Distribution Agreement,
  - b. Tax Sharing Agreement,
  - c. Sublease agreements,
  - d. International Distributorship Agreement, and
  - e. Transition License Agreement, providing Controlled 3 with temporary rights to use certain Distributing 2 intellectual property.

In connection with the External Spin-Off, certain shares of Distributing 2 restricted stock for which no election under § 83(b) has been made, currently held by individuals who are, or, in connection with the proposed transactions will become, employees or directors of Controlled 3 or any of its subsidiaries, will be converted into shares of Controlled 3 restricted stock ("Restricted Controlled 3 Stock"). The conversion ratio will be determined and applied in a manner such that the aggregate fair market value of the Restricted Controlled 3 Stock received by each such individual equals the aggregate fair market value of that individual's Distributing 2 restricted stock immediately before the conversion. The vesting restrictions on each individual's Restricted Controlled 3 Stock will be substantially the same as the vesting restrictions on the Distributing 2 restricted stock from which such Restricted Controlled 3 Stock is converted.

Following the External Spin-Off, it is expected that three current directors of Distributing 2 will serve as directors of Controlled 3. No such director will be an officer or employee

of Distributing 2. The Distributing 2 directors who serve as directors of Controlled 3 will constitute less than half of the total number of Controlled 3 directors.

## **Representations**

### **Internal Spin-Off 1**

The following representations are made in connection with Internal Spin-Off 1:

- (a) No part of the consideration to be distributed by Distributing 1 in Internal Spin-Off 1 will be received by a stockholder as a creditor, employee, or in any capacity other than that of a stockholder of Distributing 1.
- (b) No part of the consideration to be distributed by Distributing 1 in Internal Spin-Off 1 will be received by a security holder as an employee, or in any capacity other than that of a security holder of Distributing 1.
- (c) The five years of financial information submitted on behalf of Business A conducted by Sub 5 (a member of the Distributing 1 separate affiliated group ("SAG" as defined in § 355(b)(3)(B)) and on behalf of Business B conducted directly by Controlled 1 is representative of the present operations of each business, and there have been no substantial operational changes in either business since the date of the last financial statements submitted. Sub 5 is, and immediately after Internal Spin-Off 1 will be, affiliated with Distributing 1 in a manner that satisfies § 1504(a), without regard to § 1504(b).
- (d) Following Internal Spin-Off 1, the post-distribution Distributing 1 SAG will continue the active conduct of Business A (through Sub 5) independently and with its separate employees.
- (e) Following Internal Spin-Off 1, Controlled 1 will continue the active conduct of Business B independently and with its separate employees.
- (f) Internal Spin-Off 1 is being carried out to facilitate the External Spin-Off. Internal Spin-Off 1 is motivated, in whole or substantial part, by this corporate business purpose.
- (g) Internal Spin-Off 1 is not used principally as a device for the distribution of the earning and profits of Distributing 1 or Controlled 1, or both.
- (h) Distributing 1 neither accumulated its receivables nor made extraordinary payment of its payables in anticipation of Internal Spin-Off 1.
- (i) No intercompany debt will exist between Distributing 1 and its subsidiaries, on

the one hand, and Controlled 1 and its subsidiaries, on the other hand, at the time of, or subsequent to, Internal Spin-Off 1.

- (j) No two parties to Internal Spin-Off 1 is an investment company as defined in §§ 368(a)(2)(F)(iii) and (iv).
- (k) For purposes of § 355(d), immediately after Internal Spin-Off 1, no person (determined after applying § 355(d)(7)) will hold stock possessing 50 percent or more of the total combined voting power of all classes of Distributing 1 stock entitled to vote, or 50 percent or more of the total value of shares of all classes of Distributing 1 stock, that was acquired by purchase (as defined in §§ 355(d)(5) and (8)) during the five-year period (determined after applying § 355(d)(6)) ending on the date of Internal Spin-Off 1.
- (l) For purposes of § 355(d), immediately after Internal Spin-Off 1, no person (determined after applying § 355(d)(7)) will hold stock possessing 50 percent or more of the total combined voting power of all classes of stock of Controlled 1 entitled to vote, or 50 percent or more of the total value of shares of all classes of stock of Controlled 1, that was either (1) acquired by purchase (as defined in §§ 355(d)(5) and (8)) during the 5-year period (determined after applying § 355(d)(6)) ending on the date of Internal Spin-Off 1 or (2) attributable to distributions on stock of Distributing 1 that was acquired by purchase (as defined in §§ 355(d)(5) and (8)) during the 5-year period (determined after applying § 355(d)(6)) ending on the date of Internal Spin-Off 1.
- (m) There is no acquisition of stock of Distributing 1 or Controlled 1 (including any predecessor or successor of any such corporation) that is part of a plan or series of related transactions (within the meaning of § 1.355-7) that includes the distribution of the Controlled 1 stock.
- (n) Neither Controlled 1 nor Distributing 1 will be a disqualified investment corporation within the meaning of § 355(g)(2) immediately after Internal Spin-Off 1.
- (o) Payments made in connection with all continuing transactions between Distributing 1 and Controlled 1 will be made for fair market value based on terms and conditions arrived at by the parties bargaining at arm's length.
- (p) Controlled 1 and Distributing 1 will be controlled foreign corporations, within the meaning of § 957(a), immediately before and after Internal Spin-Off 1.
- (q) Distributing 2 will be a § 1248 shareholder, within the meaning of § 1.367(b)-2(b), with respect to each of Controlled 1 and Distributing 1 immediately before and after Internal Spin-Off 1.

- (r) Controlled 1 and Distributing 1 will not be passive foreign investment companies within the meaning of § 1297(a) immediately before or after Internal Spin-Off 1.
- (s) Controlled 1 will not hold any United States real property interests within the meaning of § 897(c)(1) immediately before or after Internal Spin-Off 1.
- (t) Neither Distributing 1 nor Controlled 1 (i) was or will be a United States real property holding corporation (as defined in § 897(c)(2)) at any time during the 5-year period ending on the date of Internal Spin-Off 1 or (ii) will be a United States real property holding corporation immediately after Internal Spin-Off 1.
- (u) The notice requirements of §§ 1.367(b)-1(c) will be satisfied for Internal Spin-Off 1.
- (v) Immediately after Internal Spin-Off 1, Distributing 2's basis in the stock of Controlled 1 will be less than or equal to the basis it had in the stock of Controlled 1 immediately prior to the initial transfer that necessitated the gain recognition agreement with respect to Controlled 1. No additional stock in Controlled 1 was received by Distributing 1 after the initial transfer that necessitated this gain recognition agreement.
- (w) Other than with respect to the gain recognition agreement entered into by Distributing 2 with respect to Controlled 1 (which agreement will terminate in accordance with § 1.367(a)-8(h)(3)), Internal Spin-Off 1 will not include the transfer of stock of any corporation that has been a U.S. transferor, the transferee foreign corporation, or the transferred corporation with respect to any unexpired 'gain recognition agreement' within the meaning of §§ 1.367(a)-3, 1.367(a)-8, and 1.367(a)-8T.

#### Contribution 1 and Internal Spin-Off 2

The following representations are made in connection with Contribution 1 and Internal Spin-Off 2:

- (x) No part of the consideration to be distributed by Distributing 1 will be received by a stockholder as a creditor, employee, or in any capacity other than that of a stockholder of Distributing 1.
- (y) No part of the consideration to be distributed by Distributing 1 will be received by a Distributing 1 security holder as an employee or in any capacity other than that of a security holder of Distributing 1.

- (z) The five years of financial information submitted on behalf of Business A conducted by Sub 5 (a member of the Distributing 1 SAG) and on behalf of Business B conducted by Sub 6 (a member of the Controlled 2 SAG) is representative of the present operations of each business, and there have been no substantial operational changes in either business since the date of the last financial statements submitted. Sub 5 is, and immediately after Internal Spin-Off 2 will be, affiliated with Distributing 1 in a manner that satisfies § 1504(a), without regard to § 1504(b). Following Contribution 1, and immediately after Internal Spin-Off 2, Sub 6 will be affiliated with Controlled 2 in a manner that satisfies § 1504(a), without regard to § 1504(b).
- (aa) Following Internal Spin-Off 2, the post-distribution Distributing 1 SAG will continue the active conduct of Business A (through Sub 5) independently and with its separate employees.
- (bb) Following Internal Spin-Off 2, the post-distribution Controlled 2 SAG will continue the active conduct of Business B (through Sub 6) independently and with its separate employees.
- (cc) Internal Spin-Off 2 is being carried out to facilitate the External Spin-Off. The distribution of the stock of Controlled 2 is motivated, in whole or substantial part, by this corporate business purpose.
- (dd) Internal Spin-Off 2 is not used principally as a device for the distribution of the earnings and profits of Controlled 2 or Distributing 1 or both.
- (ee) Distributing 1 neither accumulated its receivables nor made extraordinary payment of its payables in anticipation of the Contribution 1 and Internal Spin-Off 2.
- (ff) No intercompany debt will exist between Distributing 1 and its subsidiaries, on the one hand, and Controlled 2 and its subsidiaries, on the other hand, at the time of, or subsequent to, Internal Spin-Off 2.
- (gg) No two parties to Internal Spin-Off 2 is an investment company as defined in §§ 368(a)(2)(F)(iii) and (iv).
- (hh) For purposes of § 355(d), immediately after Internal Spin-Off 2, no person (determined after applying § 355(d)(7)) will hold stock possessing 50 percent or more of the total combined voting power of all classes of Distributing 1 stock entitled to vote, or 50 percent or more of the total value of shares of all classes of Distributing 1 stock, that was acquired by purchase (as defined in §§ 355(d)(5) and (8)) during the five-year period (determined after applying § 355(d)(6)) ending on the date of Internal Spin-Off 2.



- (ii) For purposes of § 355(d), immediately after the Internal Spin-Off 2, no person (determined after applying § 355(d)(7)) will hold stock possessing 50 percent or more of the total combined voting power of all classes of stock of Controlled 2 entitled to vote, or 50 percent or more of the total value of shares of all classes of stock of Controlled 2, that was either (1) acquired by purchase (as defined in §§ 355(d)(5) and (8)) during the 5-year period (determined after applying § 355(d)(6)) ending on the date of Internal Spin-Off 2 or (2) attributable to distributions on stock of Distributing 1 that was acquired by purchase (as defined in §§ 355(d)(5) and (8)) during the 5-year period (determined after applying § 355(d)(6)) ending on the date of Internal Spin-Off 2.
- (jj) There is no acquisition of stock of Distributing 1 or Controlled 2 (including any predecessor or successor of any such corporation) that is part of a plan or series of related transactions (within the meaning of § 1.355-7) that includes the distribution of the Controlled 2 stock.
- (kk) Neither Controlled 2 nor Distributing 1 will be a disqualified investment corporation within the meaning of § 355(g)(2) immediately after Internal Spin-Off 2.
- (ll) Payments made in connection with all continuing transactions between Distributing 1 and Controlled 2 will be made for fair market value based on terms and conditions arrived at by the parties bargaining at arm's length.
- (mm) Controlled 2 and Distributing 1 will be controlled foreign corporations, within the meaning of § 957(a), immediately before and after Internal Spin-Off 2.
- (nn) Distributing 2 will be a § 1248 shareholder, within the meaning of § 1.367(b)-2(b), with respect to each of Distributing 1 and Controlled 2 immediately before and after Internal Spin-Off 2.
- (oo) Distributing 1 and Controlled 2 will not be passive foreign investment companies within the meaning of § 1297(a) immediately before or after Internal Spin-Off 2.
- (pp) Controlled 2 will not hold any United States real property interests within the meaning of § 897(c)(1) immediately before or after Internal Spin-Off 2.
- (qq) Neither Distributing 1 nor Controlled 2 (i) was or will be a United States real property holding corporation (as defined in § 897(c)(2)) at any time during the 5-year period ending on the date of Internal Spin-Off 2 or (ii) will be a United States real property holding corporation immediately after Internal Spin-Off 2.

- (rr) The notice requirements of §§ 1.367(b)-1(c) will be satisfied for Contribution 1 and Internal Spin-Off 2.
- (ss) Distributing 1's contribution of the stock of Sub 1 and Sub 2 to Controlled 2 in Contribution 1 is not an exchange described in §§ 1.367(b)-4(b)(1)(i), 1.367(b)-4(b)(2)(i), or 1.367(b)-4(b)(3).
- (tt) Contribution 1 and Internal Spin-Off 2 will not include the transfer of stock in any corporation that has been a U.S. transferor, the transferee foreign corporation, or the transferred corporation with respect to any unexpired 'gain recognition agreement' within the meaning of §§ 1.367(a)-3, 1.367(a)-8, and 1.367(a)-8T.

#### Contribution 2 and External Spin-Off

The following representations are made in connection with Contribution 2 and the External Spin-Off:

- (uu) No part of the consideration to be distributed by Distributing 2 will be received by a stockholder as a creditor, employee, or in any capacity other than that of a stockholder of Distributing 2.
- (vv) The 5 years of financial information submitted on behalf of Business A conducted by Distributing 2 and on behalf of Business B conducted by Controlled 3 is representative of the present operations of each business, and there have been no substantial operational changes in either business since the date of the last financial statements submitted.
- (ww) Following the External Spin-Off, Distributing 2 will continue the active conduct of Business A, independently and with its separate employees.
- (xx) Following the External Spin-Off, Controlled 3 will continue the active conduct of Business B, independently and with its separate employees.
- (yy) The distribution of the stock, or stock and securities, of Controlled 3 is carried out for the following corporate business purposes: (i) to permit Distributing 2's existing senior management to achieve its objective of focusing entirely on Business A and to dispose of all significant assets not related to Business A, (ii) to permit Controlled 3 to adopt its own capital structure more suited to the financial characteristics of Business B and Business C, (iii) to allow Controlled 3 to broaden its management talent in Business B and Business C, and (iv) to enable Controlled 3 to formulate management compensation plans based on its industry and equity performance. The distribution of the stock, or stock and

securities, of Controlled 3 is motivated, in whole or substantial part, by one or more of these corporate business purposes.

- (zz) The External Spin-Off is not used principally as a device for the distribution of the earnings and profits of Distributing 2 or Controlled 3 or both.
- (aaa) Distributing 2 neither accumulated its receivables nor made extraordinary payment of its payables in anticipation of Contribution 2 and the External Spin-Off.
- (bbb) No intercompany debt will exist between Distributing 2 and its subsidiaries, on the one hand, and Controlled 3 and its subsidiaries, on the other hand, at the time of, or subsequent to, the External Spin-Off.
- (ccc) (i) The total adjusted bases and the fair market value of the assets transferred to Controlled 3 by Distributing 2 each equals or exceeds the sum of the liabilities (within the meaning of § 357(d)) assumed by Controlled 3; and (ii) the liabilities assumed (within the meaning of § 357(d)) in Contribution 2 and the External Spin-Off were incurred in the ordinary course of business and are associated with the assets being transferred.
- (ddd) The total adjusted basis and fair market value of the assets transferred to Controlled 3 in Contribution 2 will equal or exceed the sum of (i) the total liabilities assumed (as determined under § 357(d)) by Controlled 3 and (ii) the total amount of any money and the fair market value of any other property (within the meaning of § 361(b)) received by Distributing 2 and transferred to its creditors in connection with the reorganization.
- (eee) The total fair market value of the assets transferred to Controlled 3 in Contribution 2 will exceed the sum of (i) the amount of any liabilities assumed (as determined under § 357(d)) by Controlled 3 in connection with the exchange, (ii) the amount of any liabilities owed to Controlled 3 by Distributing 2 that are discharged or extinguished in connection with the exchange, and (iii) the amount of any cash and the fair market value of any other property (other than stock and securities permitted to be received under § 361(a) without the recognition of gain) received by Distributing 2 in connection with the exchange.
- (fff) The fair market value of the assets of Controlled 3 will exceed the amount of its liabilities immediately after the exchange.
- (ggg) Immediately before Contribution 2 and the External Spin-Off, items of income, gain, loss, deduction, and credit will be taken into account as required by the applicable intercompany transaction regulations. Further, while not

anticipated, any Distributing 2 excess loss account with respect to the Controlled 3 stock will be included in income immediately before the distribution (see § 1.1502-19).

- (hhh) Payments made in connection with all continuing transactions between Distributing 2 and its subsidiaries and Controlled 3 and its subsidiaries, will be made for fair market value based on terms and conditions arrived at by the parties bargaining at arm's length.
- (iii) No parties to the External Spin-Off is an investment company as defined in §§ 368(a)(2)(F)(iii) and (iv).
- (jjj) For purposes of § 355(d), immediately after the External Spin-Off, no person (determined after applying § 355(d)(7)) will hold stock possessing 50 percent or more of the total combined voting power of all classes of Distributing 2 stock entitled to vote, or 50 percent or more of the total value of shares of all classes of Distributing 2 stock, that was acquired by purchase (as defined in §§ 355(d)(5) and (8)) during the five-year period (determined after applying § 355(d)(6)) ending on the date of External Spin-Off.
- (kkk) For purposes of § 355(d), immediately after the External Spin-Off, no person (determined after applying § 355(d)(7)) will hold stock possessing 50 percent or more of the total combined voting power of all classes of stock of Controlled 3 entitled to vote, or 50 percent or more of the total value of shares of all classes of stock of Controlled 3, that was either (1) acquired by purchase (as defined in §§ 355(d)(5) and (8)) during the 5-year period (determined after applying § 355(d)(6)) ending on the date of the External Spin-Off or (2) attributable to distributions on stock of Distributing 2 that was acquired by purchase (as defined in §§ 355(d)(5) and (8)) during the 5-year period (determined after applying § 355(d)(6)) ending on the date of the External Spin-Off.
- (III) Neither Controlled 3 nor Distributing 2 will be a disqualified investment corporation within the meaning of § 355(g)(2) immediately after the External Spin-Off.
- (mmm) There is no acquisition of stock of Distributing 2 or Controlled 3 (including any predecessor or successor of any such corporation) that is part of a plan or series of related transactions (within the meaning of § 1.355-7) that includes the distribution of the Controlled 3 stock.
- (nnn) Distributing 2 will segregate the entire Cash Amount into a separate bank account. Over the 12-month period immediately following the External Spin-Off, Distributing 2 will use the Cash Amount solely to repay existing

- Distributing 2 indebtedness and to repurchase shares of its stock. The number of shares repurchased with the Cash Amount will be less than 3% of Distributing 2's total outstanding shares (based on trading prices as of the effective date of the External Spin-Off).
- (ooo) The sum of Distributing 2's debt to be paid with cash received from Controlled 3 will not exceed the weighted quarterly average of the Distributing 2 debt for the 12-month period ending upon the close of business on the last full business day of the quarter ending before the date on which Distributing 2's Board of Directors initially discussed the External Spin-Off (Date F).
  - (ppp) The payment of cash in lieu of fractional shares of Controlled 3 is solely for the purpose of avoiding the expense and inconvenience of issuing fractional shares and does not represent separately bargained-for consideration. The fractional share interests of each Distributing 2 shareholder will be aggregated, and no Distributing 2 shareholder is expected to receive cash in an amount greater than the value of one full share of Controlled 3 common stock.
  - (qqq) All shares of Controlled 3 Restricted Stock that are forfeited (if any) following the External Spin-Off will revert to Controlled 3.
  - (rrr) Contribution 2 and the External Spin-Off will not include the transfer of stock of any corporation that has been a U.S. transferor, the transferee foreign corporation, or the transferred corporation with respect to any unexpired 'gain recognition agreement' within the meaning of §§ 1.367(a)-3, 1.367(a)-8 and 1.367(a)-8T.
  - (sss) Neither Distributing 2 nor Controlled 3 (i) was or will be a United States real property holding corporation (as defined in § 897(c)(2)) at any time during the 5-year period ending on the date of the External Spin-Off or (ii) will be a United States real property holding corporation immediately after the External Spin-Off. Distributing 2 is not aware of any foreign shareholder who currently holds 5% or more of any class of Distributing 2 stock, or will hold 5% or more of any class of Distributing 2 stock, either immediately before or immediately after the External Spin-Off.
  - (ttt) Distributing 2 intends to treat the split of Controlled 3's stock as a reorganization pursuant to § 368(a)(1)(E) and the change in Controlled 3's name as a reorganization pursuant to § 368(a)(1)(F). In addition, Distributing 2 intends to apply § 954(c)(6) to any dividend income resulting from the sale of the equity of Sub 31 by Sub 30 to Controlled 3.

### **Rulings**

Internal Spin-Off 1

Based solely on the information submitted and on the representations set forth above, the following rulings are made with respect to Internal Spin-Off 1:

1. No gain or loss will be recognized to Distributing 1 upon the distribution of Controlled 1 stock to Distributing 2. Section 355(c).
2. No gain or loss will be recognized by (and no amount will be included in the income of) Distributing 2 upon the receipt of Controlled 1 stock pursuant to Internal Spin-Off 1. Section 355(a)(1).
3. Distributing 2's holding period for the Controlled 1 stock received by Distributing 2 will include the holding period of the Distributing 1 stock with respect to which the Controlled 1 stock will be distributed, provided that the Distributing 1 stock is held as a capital asset on the date of Internal Spin-Off 1. Section 1223(1).
4. As provided in § 312(h), proper allocation of earnings and profits between Distributing 1 and Controlled 1 will be made under § 1.312-10(b).
5. Internal Spin-Off 1 will be a distribution to which §§ 1.367(b)-1(c), 1.367(b)-5(a), and 1.367(b)-5(c) apply. If Distributing 2's postdistribution amount (as defined in § 1.367(b)-5(e)(2)) with respect to Distributing 1 or Controlled 1 is less than Distributing 2's predistribution amount (as defined in § 1.367(b)-5(e)(1)) with respect to Distributing 1 or Controlled 1, then Distributing 2's basis in such stock immediately after the distribution must be reduced by the amount of the difference. However, Distributing 2's basis in such stock must not be reduced below zero, and to the extent the foregoing reduction would reduce basis below zero, then Distributing 2 must instead include such amount in income as a deemed dividend from such corporation (see § 1.367(b)-5(f)). If Distributing 2 reduces its basis in the stock of Distributing 1 or Controlled 1 (or has an inclusion with respect to such stock), then Distributing 2 shall increase its basis in the stock of the other corporation to the extent provided in § 1.367(b)-5(c)(4).

Contribution 1 and Internal Spin-Off 2

Based solely on the information submitted and on the representations set forth above, the following rulings are made with respect to Contribution 1 and Internal Spin-Off 2:

6. Contribution 1 followed by Internal Spin-Off 2 will be a reorganization within the meaning of § 368(a)(1)(D), and Distributing 1 and Controlled 2 will each be a “party to a reorganization” within the meaning of § 368(b).
7. No gain or loss will be recognized by Distributing 1 on Contribution 1. Section 361(a).
8. No gain or loss will be recognized by Controlled 2 on Contribution 1. Section 1032(a).
9. The basis of the Sub 1 stock and Sub 2 stock received by Controlled 2 will equal Distributing 1’s basis in such stock immediately before Contribution 1. Section 362(b).
10. The holding period of the Sub 1 stock and Sub 2 stock received by Controlled 2 will include the period Distributing 1 held such stock. Section 1223(2).
11. No gain or loss will be recognized by Distributing 1 on Internal Spin-Off 2. Section 361(c)(1).
12. No gain or loss will be recognized by (and no amount will otherwise be included in the income of) Distributing 2 on the receipt of Controlled 2 stock in Internal Spin-Off 2. Section 355(a)(1).
13. Distributing 2’s holding period for the Controlled 2 stock in the hands of Distributing 2 will include the holding period of the Distributing 1 stock with respect to which the Controlled 2 stock will be distributed, provided that the Distributing 1 stock is held as a capital asset on the date of Internal Spin-Off 2. Section 1223(1).
14. As provided in § 312(h), proper allocation of earnings and profits between Distributing 1 and Controlled 2 will be made under § 1.312-10(a).
15. Contribution 1 will be an exchange to which §§ 1.367(b)-1(c) and 1.367(b)-4(a) apply.
16. No amount will be included in income as a deemed dividend equal to the § 1248 amount under § 367(b) as a result of Contribution 1. Sections 1.367(b)-1(b) and 1.367(b)-4(b).
17. Internal Spin-Off 2 will be a distribution to which §§ 1.367(b)-1(c), 1.367(b)-5(a), and 1.367(b)-5(c) apply. If Distributing 2’s postdistribution amount (as defined in § 1.367(b)-5(e)(2)) with respect to Distributing 1 or Controlled 2 is less than Distributing 2’s predistribution amount (as defined in § 1.367(b)-

5(e)(1)) with respect to Distributing 1 or Controlled 2, then Distributing 2's basis in such stock immediately after the distribution must be reduced by the amount of the difference. However, Distributing 2's basis in such stock must not be reduced below zero, and to the extent the foregoing reduction would reduce basis below zero, then Distributing 2 must instead include such amount in income as a deemed dividend from such corporation (see § 1.367(b)-5(f)). If Distributing 2 reduces its basis in the stock of Distributing 1 or Controlled 2 (or has an inclusion with respect to such stock), then Distributing 2 shall increase its basis in the stock of the other corporation to the extent provided in § 1.367(b)-5(c)(4).

Based solely on the information submitted and on the representations set forth above, the following ruling is made with respect to the combined effect of Internal Spin-Off 1 and Internal Spin-Off 2 on Distributing 2's basis in the stock of Distributing 1, Controlled 1, and Controlled 2:

18. The aggregate basis of Distributing 2's Distributing 1 stock, Controlled 1 stock, and Controlled 2 stock immediately after Internal Spin-Off 1 and Internal Spin-Off 2 will be the same as Distributing 2's aggregate basis in its Distributing 1 stock immediately before Internal Spin-Off 1 and Internal Spin-Off 2. The basis will be allocated among the Distributing 1 shares, the Controlled 1 shares, and the Controlled 2 shares in proportion to the fair market value of each. Sections 358(a)(1), (b) and (c); Section 1.358-2(a)(2).

#### Contribution 2 and the External Spin-Off

Based solely on the information submitted and on the representations set forth above, the following rulings are made with respect to Contribution 2 and the External Spin-Off:

19. Contribution 2 and the External Spin-Off will be a reorganization within the meaning of § 368(a)(1)(D), and Distributing 2 and Controlled 3 will each be a "party to a reorganization" within the meaning of § 368(b).
20. No gain or loss will be recognized by Distributing 2 on Contribution 2 and the distribution of the Cash Amount, provided that the conditions set forth in representations (nnn) and (ooo) are satisfied. Sections 357(a), 361(a), 361(b)(1)(A), and 361(b)(3).
21. No gain or loss will be recognized by Controlled 3 on Contribution 2. Section 1032(a).



22. The basis of the Contributed Property received by Controlled 3 pursuant to Contribution 2 will equal the basis of the Contributed Property in the hands of Distributing 2 immediately before Contribution 2. Section 362(b).
23. The holding period of the Contributed Property received by Controlled 3 pursuant to Contribution 2 will include the period during which Distributing 2 held the Contributed Property. Section 1223(2).
24. No gain or loss will be recognized by Distributing 2 on the External Spin-Off. Section 361(c)(1).
25. No gain or loss will be recognized by (and no amount will otherwise be included in the income of) Distributing 2's shareholders on the receipt of shares of Controlled 3 stock in the External Spin-Off. Section 355(a)(1).
26. The aggregate basis of the Distributing 2 stock and Controlled 3 stock in the hands of each Distributing 2 shareholder immediately after the External Spin-Off will be the same as the aggregate basis in the Distributing 2 stock held by such shareholder immediately before the External Spin-Off. Section 358(a)(1). The basis will be allocated among the Distributing 2 shares and the Controlled 3 shares in proportion to the fair market value of each. Sections 358(a)(1), (b) and (c); § 1.358-2(a)(2).
27. Each Distributing 2 shareholder's holding period for the Controlled 3 stock received in the External Spin-Off will include the holding period of the Distributing 2 stock with respect to which the Controlled 3 stock will be distributed, provided that the Distributing 2 stock is held as a capital asset on the date of the External Spin-Off. Section 1223(1).
28. As provided in § 312(h), proper allocation of earnings and profits between Distributing 2 and Controlled 3 will be made under §§ 1.312-10(a) and 1.1502-33(e)(3).
29. Payments made by Distributing 2 or its subsidiaries to Controlled 3 or its subsidiaries or vice versa under the Separation and Distribution Agreement, the Tax Sharing Agreement, or any of the other Ancillary Agreements entered into in connection with the Transactions that (i) have arisen or will arise for a taxable period ending on or before the External Spin-Off or for a taxable period beginning before and ending after the External Spin-Off and (ii) will not become fixed and ascertainable until after the External Spin-Off, will be treated as occurring immediately before the External Spin-Off. See Arrowsmith v. Commissioner, 344 U.S. 6 (1952); Rev. Rul. 83-73, 1983-1 C.B. 84.

30. The receipt of cash, if any, in lieu of fractional share interests in Controlled 3 stock will be treated for federal income tax purposes as if the fractional share interests are distributed by Distributing 2 and then sold by the recipient. The amount and character of any gain or loss (measured by the difference between the basis allocated to the fractional share in ruling 26 (above) and the amount of cash received, and taking into consideration the holding period given the fractional share in ruling 27 (above)), will be treated as capital, provided the stock was held as a capital asset by the selling shareholder. Sections 1001(a), 1221, and 1222.

### **Caveats**

Except as specifically ruled above, no opinion is expressed about the tax treatment of the above transactions under other provisions of the Code or the Income Tax Regulations, or about the tax treatment of any conditions existing at the time of, or effects resulting from, the above transactions.

In particular, no opinion is expressed regarding whether Internal Spin-Off 1, Internal Spin-Off 2, or the External Spin-Off: (i) satisfy the business purpose requirement of § 1.355-2(b); (ii) are used principally as a device for the distribution of the earnings and profits of either Distributing 1, Distributing 2, Controlled 1, Controlled 2 or Controlled 3 (see § 355(a)(1)(B) and §§ 1.355-2(d)); or (iii) are part of a plan (or series of related transactions) pursuant to which one or more persons will acquire directly or indirectly stock representing a 50-percent or greater interest in any distributing corporation or controlled corporation (see § 355(e)(2)(A)(ii) and § 1.355-7).

Furthermore, no opinion was requested and therefore (except to the extent specifically ruled upon above) no opinion is expressed as to the tax treatment of: (i) the IP Agreement; (ii) any payments made under any other of the Ancillary Agreements; (iii) any of the Internal Restructurings described in the Proposed Transactions section at (vii) – (xix); and (iv) the Distributing 2 and Controlled 3 employee benefit plans.

Additionally, to the extent not otherwise specifically ruled upon above, no opinion is expressed on: (i) whether any of the proposed transactions will result in the recapture of any “dual consolidated loss” within the meaning of §§ 1.1503-2(c)(5) or 1.1503(d)-1(b)(5); (ii) the adjustments to earnings and profits or deficits in earnings and profits, if any, in any of the transactions to which § 367 applies; (iii) any other consequences under § 367 on any Internal Restructurings described in the Proposed Transactions section at (vii) – (xix); and (iv) whether any or all of the foreign corporations involved in this transaction are passive foreign investment companies within the meaning of § 1297(a).

Finally, if it is determined that any or all of the foreign corporations are passive foreign investment companies, no opinion is expressed with respect to the application of

§§ 1291 through 1298 to the proposed transactions. In particular, in a transaction in which gain is not otherwise recognized, regulations under § 1291(f) may require gain recognition notwithstanding any other provisions of the Code.

### **Procedural Statements**

This ruling is directed only to the taxpayers who requested it. Section 6110(k)(3) provides that it may not be used or cited as precedent.

A copy of this letter must be attached to any income tax return to which it is relevant. Alternatively, taxpayers filing their returns electronically may satisfy this requirement by attaching a statement to their return that provides the date and control number of this letter ruling.

In accordance with the power of attorney on file in this office, a copy of this ruling letter is being sent to your authorized representatives.

Sincerely,

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Alison G. Burns  
Branch Chief, Branch 2  
(Corporate)

cc: